

United States
Circuit Court of Appeals *8*
For the Ninth Circuit.

LEE HING, also known as LEE GOOD MING,
Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration,
Port of San Francisco,
Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
Second Division.

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Circuit Court of Appeals
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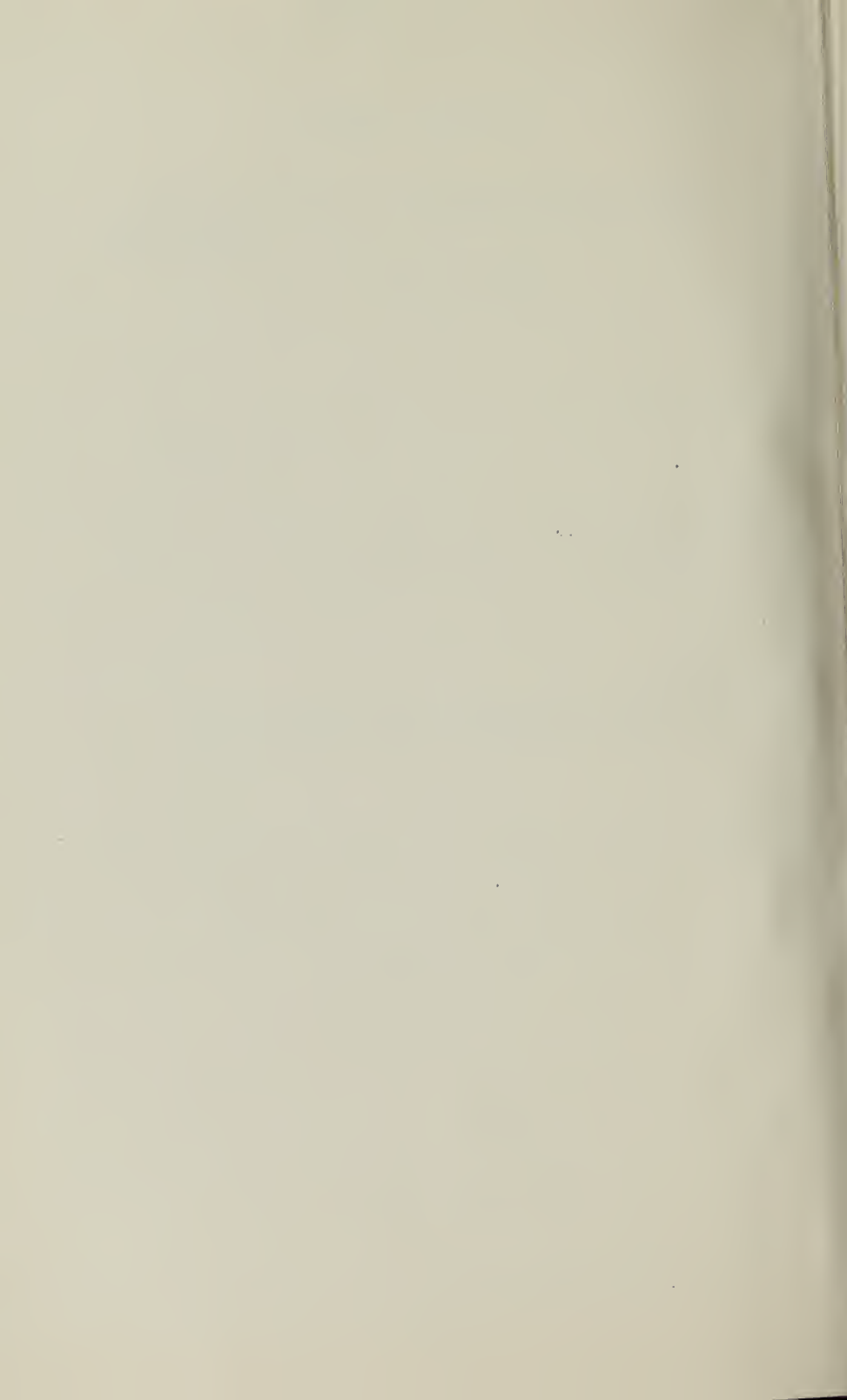
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names of Attorneys of Record.

For Petitioner and Appellant:

JOSEPH P. FALLON, Esq., San Francisco,
Cal.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-
cisco, Cal.

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia, Second Division.

No. 17,736.

In the Matter of LEE SOO, on Habeas Corpus.

Praeceptum for Transcript of Record.

To the Clerk of said Court:

Sir: Please make copies of the following papers
to be used in preparing transcript on appeal:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Demurrer to petition.
4. Minute order regarding immigration record.
5. Judgment and order dismissing order to show
cause and denying petition for writ.
6. Substitution of attorney.
7. Notice of appeal.
8. Petition for appeal.

9. Assignment of errors.
10. Order allowing appeal.
11. Stipulation and order regarding immigration record.
12. Clerk's certificate.
13. Citation on appeal—original and copy.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed Sep. 5, 1923. Walter B. Mal-
ling, Clerk. By C. M. Taylor, Deputy Clerk. [1*]

In the Southern Division of the United States Dis-
trict Court in and for the Northern District of
California, First Division.

No. 17,736.

In the Matter of LEE SOO 21491/2-4 Ex. S. S.
“Pres. Cleveland” October 10, 1922. On
Habeas Corpus.

Petition for Writ.

To the Honorable, United States District Judge,
now presiding in the United States District
Court, in and for the Northern District of
California, First Division:

It is respectfully shown by the petition of the
undersigned that Lee Soo, hereafter in this peti-
tion referred to as “the detained,” is unlawfully
imprisoned, detained, confined and restrained of his
liberty by Edward White, Commissioner of Immi-

*Page-number appearing at foot of page of original certified Tran-
script of Record.

gration for the port of San Francisco, at the Immigration Station at Angel Island, County of Marin, State and Northern District of California, Southern Division thereof; that the said imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 6th, 1882; July 5th, 1884; November 3d, 1893, and April 29th, 1902, as amended and re-enacted by Section 5 of the Deficiency Act of April 7th, 1904, which said acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and that he, the said Commissioner intends to deport the said detained away from and out of the United States to the Republic of China.

That the Commissioner claims that the said detained arrived at the port of San Francisco on or about the 10th day of October, 1922, on the S.S. "President Cleveland," and thereupon made application to enter the United States as a son of a native-born citizen thereof, and that the application of the said detained to enter the United States as a citizen thereof was denied by the said [2] Commissioner of Immigration and a Board of Special Inquiry, and that an appeal was thereupon taken from the excluding decision of the said Commissioner of Immigration and the said Board of

Special Inquiry to the Secretary of the Department of Labor, and that the said Secretary thereafter dismissed the said appeal; that it is claimed by the said Commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing; that the action of the said Commissioner and the said Board of Special Inquiry and the said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statute in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner alleges, on his information and belief, that the hearing and proceedings had herein, and of the said Board of Special Inquiry, and the action of the said secretary was and is in excess of the authority committed to them by the said rules and regulations and by said statutes and that the denial of the said application of the said detained to enter the United States as the son of a native-born citizen thereof, was and is an abuse of the authority committed to them by the said statutes in each of the following particulars hereinafter set forth:

I.

It is positively and affirmatively established by the evidence and is admitted and conceded by the said Commissioner, the Board of Special Inquiry which denied the detained the right of admission into the United States, and the Secretary of Labor who affirmed the excluding decision of the said

board, that the relationship of father and son exists between the detained and Lee Hing, the person appearing as and claiming to be his father.

II.

It is positively and affirmatively established by the evidence and is admitted and conceded by the said Commissioner, the [3] Board of Special Inquiry which denied the detained the right of admission into the United States, and the Secretary of Labor who affirmed the excluding decision of the said board, that the said Lee Hing was duly and regularly readmitted into the United States as a native-born citizen thereof by the appropriate immigration authorities when he returned to the port of San Francisco on the SS. "Manchuria," May 31, 1906, and again upon the occasion of his return to the United States when he arrived at the port of San Francisco on the SS. "Mongolia," June 1, 1915; it is further admitted and conceded by each and all of the said officials that the said Lee Hing was so admitted into the United States upon each of said occasions as a citizen thereof. It is further admitted and conceded by the said officials, and each of them, that the said Lee Hing had been arrested under a departmental warrant of arrest charging him with being illegally within the United States, and it is further admitted and conceded by each and all of the said officials hereinbefore enumerated that the Assistant Secretary of Labor did upon August 3, 1916, cancel the said warrant of arrest, and in cancelling said warrant of arrest held that he was not satisfied to hold that the said Lee

Hing was in the United States in violation of law; and it is further admitted and conceded by each and all of the said officials that there was issued to the said Lee Hing Certificate of Identity No. 23775 upon the 7th day of September, 1916, and that said certificate was so issued to the said Lee Hing as a native-born citizen of the United States showing his readmittance as such into the United States, and said certificate contained the following endorsement thereon:

“This is to certify that the person named and described on the reverse side hereof has been regularly admitted to the United States as of the statute indicated, whereof satisfactory proof has been submitted.”

And your petitioner alleges, upon his information and belief, that it is admitted and conceded by each and all of the said officials hereinbefore enumerated that no separate other, further, or additional evidence attesting or detracting from the American citizenship of the said Lee Hing was place before the [4] said officials or any of them in the matter of the application of this detained to enter the United States than was previously placed before the Secretary of Labor at the time of the cancellation of the said warrant of arrest against the said Lee Hing wherein it was found by the said Assistant Secretary of Labor that he was not satisfied to hold that the said Lee Hing was in the United States in violation of law. And your petitioner alleges, upon his information and belief, that the action of the said Commissioner, the said Board

of Special Inquiry and the said secretary, in treating and considering that the said Lee Hing is a native-born citizen of the United States of America, and leaving him at liberty and at large within the United States as such a native-born citizen thereof in so far as his own individual status is concerned, and denying to the said Lee Hing the rights and privileges of his said status as a citizen of the United States in so far as his said son Lee Soo, the detained herein, is concerned, was and is an abuse of authority and a misconstruction of the terms and provisions of Section 1993 of the Revised Statutes of the United States, and in violation of the provisions of Article 5 in Amendment to the Constitution of the United States in this that the detained is deprived of his liberty without due process of law.

III.

You petitioner alleges, upon his information and belief, that the evidence presented before the said Commissioner, the said Board of Special Inquiry, and the said secretary, upon the application of the said detained to enter the United States, which said evidence is now hereby referred to with the same force and effect as if set forth in full herein, was of such a conclusive kind and character establishing the birth of the father of the detained within the United States and hence showing the said detained to be the son of the native-born citizen thereof, and which said evidence was of such legal weight and sufficiency that it [5] was an abuse of discretion on the part of the said Com-

missioner and the said board, and the said secretary to deny the said detained the right of admission into the United States and instead thereof to refuse to be guided by said evidence, and the said adverse action of the said Commissioner and the said board, and the said secretary was, your petitioner alleges, upon his information and belief, arrived at and was done in denying the said detained the fair hearing and consideration of his case to which he is entitled. Said action was done in excess of the discretion committed to the said secretary and the said board, and to the said Commissioner of Immigration. And your petitioner further alleges, upon his information and belief, that the said action of the said secretary and the said Commissioner, and the said board, was influenced against the said detained and against his witnesses solely because of his being of the Chinese race.

That your petitioner has not in his possession any part or parts of the said proceedings had before the said Commissioner, the said Board of Special Inquiry and the said secretary, and it is for said reason impossible for your petitioner to annex hereto any part or parts of said immigration records; the copy of the record having been formerly in the hands of your petitioner, but having been sent to Washington, D. C., and not having been since returned to your petitioner, and the notice of the sustaining of the action of the said excluding decision by the Board of Special Inquiry having been transmitted from Washington by telegraph, and for said reason the copy of the said record is

not now available for the use of your petitioner. Your petitioner further alleges that the only complete copy of the said record is now in the hands of the Department of Labor at Washington and it is impossible to procure a copy of same or any part thereof in time to submit with this petition and to enable your petitioner to prevent the deportation of the said detained.

That it is the intention of the said Commissioner to deport the said detained out of the United States and away from [6] the land of which he is a citizen by the SS. "President Pierce," sailing from the port of San Francisco upon the 28th day of December, 1922, at 1:00 o'clock P. M., and unless this Court intervenes to prevent said deportation the said detained will be deprived of residence within the land of his citizenship.

That the said detained is in detention as afore-said and for said reason is unable to verify this said petition upon his own behalf and for said reason petition is verified by your petitioner, but for and as the act of the said detained.

WHEREFORE your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said Commissioner commanding and directing him to hold the body of the said detained within the jurisdiction of this court, and to present the body of the said detained before this Court at a time and place to be specified in said order, together with the time and cause of his detention, so that the same may be inquired into to the end

that the said detained may be restored to his liberty and go hence without day.

LEE GOON.

GEO. A. McGOWAN,
Attorney for Petitioner,
550 Montgomery Street,
San Francisco, Calif. [7]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

The undersigned, being first duly sworn, according to law, doth depose and say:

That he is the petitioner named in the foregoing petition; that the same has been read and explained to him and he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

LEE GOON.

Subscribed and sworn to before me this 23d day of December, 1922.

[Seal]

JOSEPH PENSA,
Notary Public.

[Endorsed]: Filed Dec. 26, 1922. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[8]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

No. 17,736.

In the Matter of LEE SOO 21491/2-4 Ex. SS.
"President Cleveland." October 10, 1922. On Habeas Corpus.

Order to Show Cause.

Good cause appearing therefor, and upon reading the verified petition on file herein:

IT IS HEREBY ORDERED that Edward White, Commissioner of Immigration for the Port of San Francisco, appear before this Court on the 6th day of January, 1923, at the hour of 10 o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein as prayed for, and that a copy of this order be served upon the said Commissioner.

AND IT IS FURTHER ORDERED that the said Edward White, Commissioner of Immigration as aforesaid, or whoever, acting under the orders of the said Commissioner or the Secretary of Labor, shall have the custody of the said Lee Soo are hereby ordered and directed to retain the said Lee Soo within the custody of the said Commissioner of Immigration, and within the jurisdiction of this Court until its further order herein.

Dated at San Francisco, California, December 26, 1922.

FRANK H. RUDKIN,
United States District Judge.

[Endorsed]: Filed Dec. 26, 1922. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [9]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 17,736.

In the Matter of LEE SOO on Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Comes now the respondent, Edward White, Commissioner of Immigration at the port of San Francisco, in the Southern Division of the Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition does not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition is insufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JOHN T. WILLIAMS,

United States Attorney,

BEN F. GEIS,

Assistant United States Attorney,

Attorneys for Respondent.

[Endorsed]: Filed Jan. 29, 1923. W. B. Mal-
ing, Clerk. By C. W. Calbreath, Deputy Clerk.
[10]

At a stated term of the Southern Division of the
United States District Court for the Northern
District of California, First Division, held at
the courtroom thereof, in the city and county
of San Francisco, on Monday, the 29th day of
January, in the year of our Lord, one thousand
nine hundred and twenty-three. Present: The
Honorable WM. C. VAN FLEET, District
Judge.

No. 17,736.

In the Matter of LEE SOO on Habeas Corpus.

**Minutes of Court—January 29, 1923—Hearing on
Demurrer.**

This matter came on regularly this day for hear-
ing on order to show cause as to the issuance of a
writ of habeas corpus herein. Geo. A. McGowan,
Esq., appeared as attorney for petitioner and de-
tained. P. A. Robbins, Esq., was present for and on
behalf of the respondent, and filed demurrer to
petition, and all parties consenting thereto, it is or-
dered that the Immigration Records be filed as Re-
spondent's Exhibits "A," "B," "C," "D," "E,"
"F," "G," and "H," and that the same be con-
sidered as part of original petition. After hear-
ing the respective attorneys, the Court ordered said
matter submitted on briefs to be filed in 5, 5 and 3
days. [11]

In the District Court of the United States, Northern
District of California, Southern Division.

No. 17,736.

In the Matter of LEE SOO, on Habeas Corpus.

**Opinion and Order Denying Petition for Writ of
Habeas Corpus.**

GEORGE A. McGOWAN, of San Francisco, Attorney
for the Petitioner.

JOHN T. WILLIAMS, U. S. Attorney, and BEN
F. GEIS, Assistant U. S. Attorney, Attorneys
for the Respondent.

Lee Soo, admittedly born in China, applied for admission at the port of San Francisco as a son of one Lee Hing, also known as Lee Good Ming, alleged to be a native-born citizen of the United States, in the right given such an applicant by Sec. 1993, R. S. His application was denied by the Immigration Authorities and upon appeal to the Secretary of Labor the decision of the Board of Special Inquiry was affirmed and the appeal dismissed. Thereupon the present petition for *habeas corpus* to release the applicant from custody by the Immigration Authorities, in which he is held, was filed in his behalf. The petition is very general, consisting largely of allegations of conclusions, but by stipulation in open court the entire immigration records and files involved in the application were introduced as an amendment and supplement to the petition to which petition, [12] as thus amended, the Government

has demurred generally upon the ground that it presents no case in law or fact warranting the issuance of the writ.

The finding against the petitioner was based upon the conclusion reached by the Immigration Authorities that petitioner had failed to sustain the burden resting upon him of establishing the facts which would fix his status as that of a citizen of the United States under Section 1993 aforesaid; that is, while the Government did not seek to controvert the alleged fact that petitioner was the son of the Lee Hing above described the conclusion was reached that the evidence was insufficient to show that the latter was as claimed a native-born citizen of the United States and that consequently the rights assumed by petitioner as resulting from his relationship to the latter must fall to the ground. This conclusion resulted from the disclosure of the immigration records, made a part of the petition, that petitioner's alleged father had gotten his lines crossed and tangled up with another Lee Hing, also claiming to be a native-born citizen, in a manner to render it doubtful which of the two, if either, was such citizen, the claim of both being based partly at least on the same records.

The facts briefly stated are these: Petitioner's alleged father, on October 5, 1904, made an affidavit (XB, P5) setting forth that he was born in San Francisco in 1876 and was thereafter taken to China by his father in 1882, where he remained until 1899, when he returned to the United States on the SS. "Belgie," holding ticket No. 162, and on

March 2, 1899, was duly landed as a native by the then Collector of Customs. This affidavit bore an endorsement showing that the affiant thereafter, on October 13, 1904, departed from the United States on the SS. "Mongolia," and attached to the record was an affidavit of one Henry C. Dibble, an attorney (XB, P4), to the effect that the person in whose behalf it was made was the [13] same Lee Hing, who was No. 162, returning on SS. "Belgie," November, 1898—who affiant claims he represented at that time. This Lee Hing returned to this country on the SS. "Manchuria" 3, 1906 (XB, P3), and was landed the following day by the then Commissioner. On this latter occasion one Inspector Gasaway, on May 13, 1906, made a report to the inspector in charge of the Chinese Bureau that: "In re case of Lee Hing, No. 64—"Manchuria," May 13, 1906. I have compared the enclosed photograph with that in file in his previous landing and find them to be one and the same person." It appears, however, from a comparison of the photograph of this Lee Hing, appearing at page 5 of Exhibit "B," that the photograph attached to pages 5 and 12 of Exhibit "C" (being the photograph of the person previously admitted as No. 162 on the SS. "Belgie") was quite evidently that of a wholly different person. It further appeared that Lee Hing, the alleged father of the petitioner, subsequently made an application on October 21, 1912 (XB, P24), to the Commissioner of Immigration at Boston, Massachusetts, for a Native's Return Certificate, Form 430, which was thereafter granted by the Commis-

sioner of Immigration at Seattle, Washington, November 8, 1912, and that he departed from the latter port on the SS. "Minnesota," December 16, 1912; that he thereafter returned through the port of San Francisco on the SS. "Mongolia," June 1, 1915, and was admitted as a returning citizen (XB, P25), his photograph as he appeared at the latter date, appearing at page 26, Exhibit "B." But the record also discloses that on April 1, 1912, another Lee Hing (known also as Lee Ging Sing) made an application to the Commissioner at San Francisco for a Native's Return Certificate, Form 430 (XC, P35), which was granted and he departed for China on the SS. "Mongolia," April 10, 1912. He returned on the SS. "Mongolia" April 22, 1913, and was duly admitted on his certificate, as a native (XC, P36). [14] This latter Lee Hing claimed to be the Lee Hing who had been admitted as No. 162 on the "Belgie," November, 1918; and comparison of the photograph appearing on pages 5 and 10 of Exhibit "C" with that appearing on the application for a return certificate (XC, P35), and the photograph appearing at page 37 of the same record tends strongly to confirm the correctness of his claim that he was the Lee Hing who was previously admitted as a native on March 2, 1899, by the then Collector of Customs.

From these facts it was deduced and found by the Board of Special Inquiry that this last-mentioned record of 1898 did not refer to the father of the petitioner and it was accordingly found by them that the record did not sustain petitioner's conten-

tion as to the fact of his father's citizenship and the judgment of exclusion followed.

There are other facts bearing, more or less remotely, upon the question involved, but they are not essential to be stated.

VAN FLEET, District Judge.—(After stating the facts): The issuance of the writ is urged upon two grounds; (1) that petitioner was not accorded a fair hearing, and (2) that his right of admission being based upon his claim of citizenship, he is entitled as matter of right to have that claim judicially determined. Both contentions are based upon a misapprehension of the law.

1. The first proposition is based upon the claim that the evidence preponderated so strongly in favor of the petitioner's contention as to the status of his father that the adverse determination is itself evidence that the Board of Special Inquiry was actuated by bias and prejudice against petitioner and in and of itself discloses that the hearing was unfair. But it is not controverted that the record discloses a serious [15] discrepancy, sufficient to raise a substantial conflict, on this essential feature of petitioner's case, and this being so, the question of fact involved was essentially one for the determination of that board and is not open to review by this Court. And the fact, if it be a fact, that the evidence may have preponderated in favor of petitioner's contention does not tend to show that the hearing was in any proper sense unfair or that the decision of the board involved an abuse of discre-

tion. *White vs. Chan Wy Sheung*, 270 Fed. 764. As there held, "a denial of a fair hearing cannot be established by showing that the decision of the immigration officials was against the weight of the testimony. *Chin Yow vs. United States*, 208 U. S. 8." There is nothing in the record to bring the case within the doctrine of *Quock Jan Fat vs. White*, 253 U. S. 455.

2. Nor does the fact that the petitioner's alleged right of admission is based upon his claim of citizenship entitle him to, in such an instance as the present, to a judicial determination of that claim before he may be deported. While one lawfully within the United States, claiming to be a citizen thereof may not competently be deprived of his right to be here by mere execution order, but he is entitled to have the question of his asserted citizenship judicially determined before he may be removed (*Ng Fung Ho vs. White*, 259 U. S. 276) no such right attaches to one who, like the petitioner, is seeking admission to the country for the first time and the fact that his claim to admission may be based upon the asserted right of citizenship does not bring him within the category of those entitled to invoke the jurisdiction of our courts for the determination of that question. *United States vs. Ju Toy*, 198 U. S. 253; *Tang Tun vs. Edsell*, 223 U. S. 673. [16]

The distinction is between the case of one lawfully within our borders defending his asserted right to remain, and one who, like petitioner, is in legal contemplation without our borders seeking to get in. In the latter case the rights of the ap-

plicant are controlled by the Immigration Act, Ng Fung Ho vs. White, *supra*.

The writ is denied and the petition will be dismissed.

[Endorsed]: Filed July 28, 1923. Walter B. Maling, Clerk. [17]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 30th day of July, in the year of our Lord, one thousand nine hundred and twenty-three. Present: the Honorable WM. C. VAN FLEET, District Judge.

No. 17,736.

In the Matter of LEE SOO, on Habeas Corpus.

**(Minutes of Court—July 30, 1923—Order Denying
Petition for Writ.)**

The petition herein, heretofore submitted being now fully considered and the Court having filed its opinion, it is ordered that the writ be denied and the petition dismissed. [18]

In the District Court of the United States, Northern
District of California, Southern Division.

No. 17,736.

In the Matter of LEE SOO, on Habeas Corpus.

Substitution of Attorney.

I hereby substitute ———, Esq., as attorney
in the above-entitled case, in my place and stead.

GEO. A. McGOWAN.

I hereby agree to be substituted as attorney in
the above-entitled case.

JOSEPH P. FALLON.

[Endorsed]: Filed Aug. 8, 1923. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy. [19]

In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, Second Division.

No. 17,736.

In the Matter of LEE SOO, on Habeas Corpus.

Notice of Appeal.

To the Clerk of said court, and to the Honorable
John T. Williams, United States Attorney in
and for the Southern Division of the United
States District Court, for the Northern Dis-
trict of California, First Division:

You and each of you will please take notice that
Lee Hing, also known as Lee Good Ming, the

petitioner in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein July 28th, 1923, denying the petition for a writ of Habeas Corpus filed herein.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed Aug. 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[20]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,736.

In the Matter of LEE SOO on Habeas Corpus.

Petition for Appeal.

Comes now Lee Hing, also known as Lee Good Ming, the petitioner in the above-entitled matter, and respectfully shows:

That on the 28th day of July, 1923, a judgment and order was made by the above-entitled Court and entered herein denying a writ of habeas corpus in the above-entitled matter and dismissing the petition of said petitioner for a writ of habeas corpus in which said judgment and order certain errors were committed to the prejudice of the above named Lee Soo, which more fully appear by his assignment of errors filed herewith.

WHEREFORE, your petitioner prays that an appeal may be allowed to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and that the Clerk of the above-entitled Court be directed to make and prepare a transcript of all the papers, proceedings and record of the above-entitled matter and to transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, within the time allowed by law, and for an order that the execution of the warrant of deportation of said Lee Soo be stayed pending this appeal.

JOSEPH P. FALLON,
Attorney for Petitioner.

[Endorsed]: Filed Aug. 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[21]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,736.

In the Matter of LEE SOO on Habeas Corpus.

Assignment of Errors.

Now comes the petitioner, Lee Hing, also known as Lee Good Ming, through his attorney, Joseph P. Fallon, Esq., and sets forth the errors he claims the above-entitled Court committed in denying his petition for a writ of habeas corpus as follows:

I.

That said Court erred in not granting said petition for a writ of habeas corpus.

II.

That said Court erred in denying said petition for a writ of habeas corpus.

III

That said Court erred in holding that the petition did not show or tend to show that said Lee Soo did not obtain or was accorded a full and fair hearing or any legal hearing by said Immigration officers or by said Secretary of Labor.

IV.

That the Court erred in not holding that the evidence submitted upon the application of the said detained to enter the United States was of such a conclusive kind and character and was of such legal weight and sufficiency that it was an abuse of discretion on the part of said immigration officials not to be guided thereby.

JOSEPH P. FALLON,

Attorney for Petitioner.

[Endorsed]: Filed Aug. 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[22]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17, 736.

In the Matter of LEE SOO on Habeas Corpus.

Order Allowing Appeal.

It appearing to the above-entitled Court that Lee Hing, also known as Lee Good Ming, the petitioner herein, has this day filed and presented to the above Court his petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and order of this Court denying a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor;

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled court make and prepare a transcript of all the papers, proceedings and record in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of said Lee Soo be and the same is hereby stayed pending this appeal and that the said Lee Soo be not removed

from the jurisdiction of this Court pending this appeal.

Dated August 8th, 1923.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Aug. 8, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[23]

(Citation on Appeal—Copy.)

United States of America,—ss.

The President of the United States, to John D. Nagle, Commissioner of Immigration, Port of San Francisco, and John T. Williams, United States Attorney. GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Lee Hing, also known as Lee Good Ming, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable _____, United States District Judge for the Southern Division of

the Northern District of California, this — day of September, A. D. 1923.

, JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: No. 17,736. United States District Court for the Northern District of California. Lee Hing, also known as Lee Good Ming, Appellant, vs. John D. Nagle, Commissioner of Immigration of San Francisco. Citation on Appeal. [24]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,736.

In the Matter of LEE SOO on Habeas Corpus.

**Stipulation and Order Respecting Withdrawal of
Immigration Record.**

It is hereby stipulated and agreed by and between the attorney for the petitioner and appellant herein and the attorney for the respondent and appellee herein, that the original immigration record in evidence and considered as part and parcel of the petition for writ of habeas corpus upon hearing of the demurrer in the above-entitled matter, may be withdrawn from the files of the Clerk of the above-entitled court and filed with the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit, there to be considered as a part and parcel of the record on appeal in the

above-entitled case with the same force and effect as if embodied in the transcript of the record, and so certified to by the Clerk of the Court.

Dated San Francisco, Cal., September 5, 1923.

JOHN T. WILLIAMS,

Attorney for Respondent and Appellee.

JOSEPH P. FALLON,

Attorney for Petitioner and Appellant.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the said immigration record therein referred to may be withdrawn from the office of the Clerk of this Court and filed in the office of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, said withdrawal to be made at the time the record on appeal herein is certified to by this Court. [25]

Dated San Francisco, Cal., September 5th, 1923.

JOHN S. PARTRIDGE,

United States District Judge.

[Endorsed]: Filed Sep. 5, 1923. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [26]

Certificate of Clerk U. S. District Court to Transcript on Appeal. •

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the Matter of Lee Soo on

Habeas Corpus, No. 17,736, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal (copy of which is embodied herein), and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Nine Dollars and Eighty-five Cents (\$9.85) and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal issued herein (page 28).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of September, 1923.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [27]

(Citation on Appeal—Original.)

United States of America,—ss.

The President of the United States, to John D. Nagle, Commissioner of Immigration, Port of San Francisco, and John T. Williams, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of

San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Lee Hing, also known as Lee Good Ming, appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PART-
RIDGE, United States District Judge for the
Southern Division of the Northern District of Cali-
fornia, this 5th day of September, A. D. 1923.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: No. 17,736. United States Dis-
trict Court for the Northern District of California.
Lee Hing, also Known as Lee Good Ming, Appel-
lant, vs. John D. Nagle, Commissioner of Immigra-
tion, Port of San Francisco. Citation on Appeal.
Filed Sep. 5, 1923. Walter B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [28]

[Endorsed]: No. 4096. United States Circuit
Court of Appeals for the Ninth Circuit. Lee Hing,
also Known as Lee Good Ming, Appellant, vs. John
D. Nagle, as Commissioner of Immigration, Port of
San Francisco, Appellee. Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed September 7, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

